

Case 1:04-cv-11836-RCL

Document 100-23

Filed 03/04/2008 Page 1 of 3

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRANS-SPEC TRUCK SERVICES, INC.	
ATTORNEY TRUCK SERVICE	
ELLENSTEIN	CIVIL ACTION NO. BOSTON, MASSACHUSETTS
ATLANTIC LINE	
Defendant	

ADDITIONAL DEPOSITION OF ROBERT G.  
BARTON, JR., A witness called on behalf of the  
defendant, pursuant to Federal Rule of Civil  
Procedure, before Carolyn J. Rogers, certified  
Shorthand Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the offices of  
CAMPBELL, CAMPBELL, EDWARDS & CONROY, One Constitution  
Place, Boston, Massachusetts, on TUESDAY, MAY 17,  
2005, commencing at 9:30 a.m.

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50 Colcord Drive, Unit #207  
Andover, Massachusetts 01810  
(978) 470-0000  
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**APPEARANCES:**  
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Campbell Campbell Edwards & Conroy  
One Constitution Place  
Boston, MA 02129  
(617) 241-8070/FAX (617) 241-5115  
On Behalf of the Defendant Caterpillar, Inc.  
  
CHRISTIAN G. SAMITO, ESQUIRE  
Doran Hart, LLP  
100 Summer Street  
Boston, MA 02110  
(617) 450-4000/Fax (617) 450-4501  
On Behalf of the Plaintiff  
Trans-Spec Truck Service, Inc.

**ALSO PRESENT:**  
William Barton, Videographer  
In-Court Technologies

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<b>I N D E X</b>		
DEFENDANT	EXAMINATION BY	PAGE NO.
Robert G. Barton, Jr.	(Mr. Grunert)	4, 120
	(Mr. Samito)	145, 154

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<b>E X H I B I T S</b>		
NO.	DESCRIPTION	PAGE NO.
1	Photocopy of Electronic Calendar	12
2	Flywheel Housing Repair 2002-2004	18
3	Color Copies of Photographs	62
4	Photocopies of Photographs	134
5	Photocopies of Photographs	136
6	Color Copies of Photographs	166

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1 I represent the defendant Caterpillar, Inc.

2 MR. SAMITO: Christian G. Samito of the  
3 firm Donovan and Hatem, representing Mr. Barton and  
4 Trans-Spec Truck Service, Inc.

5 THE VIDEOGRAPHER: The stenographer will  
6 now swear in the witness.

7 ROBERT G. BARTON, JR.,  
8 a witness called on behalf of the Defendant, having  
9 first been satisfactorily identified by the  
10 production of his driver's license and duly sworn by  
11 the reporter/notary public, testifies and says as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. GRUNERT:

15 Q. State your full name for the record,  
16 please?

17 A. Robert G. Barton, Jr..  
18 Q. What is your date of birth, Mr. Barton?  
19 A. 1/1/49.  
20 Q. Where do you live?  
21 A. 89 Central Street, West Boylston,  
22 Massachusetts.  
23 Q. Are you married?  
24 A. Yes.

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22 Massachusetts.  
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1 Q. Do you have children?  
2 A. Yes.  
3 Q. Are you employed by Trans-Spec Truck  
4 Service, Inc.?

5 A. Yes, I am.  
6 Q. How long have you been employed by  
7 Trans-Spec?

8 A. Since October of 2003.  
9 Q. Who was your employer before October of

10 2003?  
11 A. Santa Fuel.  
12 Q. What was the first name?  
13 A. Santa.

14 Q. As in Santa Claus?  
15 A. As in Santa Claus.  
16 Q. Gotcha.  
17 A. Bridgeport, Connecticut.

18 Q. Is Santa Fuel -- or was Santa Fuel owned  
19 or affiliated in any way with Joseph Howard?  
20 A. No.

21 Q. Was it affiliated in any way with  
22 Trans-Spec?  
23 A. No.  
24 Q. Is it accurate that you played no role in

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EXHIBIT

tabbed  
Exhibit O

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1 channeled it to --

2 (Witness Nods Head.)

3 Q. And did you receive a personal response or  
4 was it an automated response?5 A. I received a response that someone from  
6 Southworth-Milton would be in touch with me.7 Q. And then who responded from  
8 Southworth-Milton?9 A. I received an e-mail from Jim Withrow from  
10 Southworth-Milton. Prior to that, I called Al  
Cardoza about it, and Al Cardoza told me the program  
11 no longer existed. And then I then -- the next day I  
12 received an e-mail from Jim Withrow explaining to me  
13 they have what's called an Advantage program for an  
14 additional 250,000 miles, or 200 miles.15 Q. The next entry, "Freightliner re 7400  
16 doing front structure first." Does that mean 7400  
17 was still at Tri State during this time?

18 A. I believe so.

19 Q. So 7400 was in since September 8?

20 A. Yes.

21 Q. The next entry refers to East River.  
22 "Billy told East River can't do work." What is East  
23 River?24 C. J. REPORTING 978.409.9090  
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2 8300 had been repaired and it had to go  
back to Caterpillar for further repair?3 A. That's correct. I believe this vehicle  
4 sat at Freightliner solong that we finally ended up  
5 taking it to CAT because they had an opening. They  
6 fixed it. There happened to be an exhaust leak We  
7 had to take it back.8 Q. It says "Dropped off parts for 8300."  
9 Does that mean that 8300 was still in the shop since  
10 your September 7th entry?11 A. Very possible. Obviously, they had a  
12 flywheel apart and before they put it back together,  
13 they noticed the clutch might have been bad, so we  
14 probably brought them out a new clutch. So when they  
15 were reassembling, they put the clutch in as well.16 Q. Are you familiar with the repair history  
17 of Truck 6100 in early October 2004?

18 A. You'll have to refresh my memory.

19 MR. SAMITO: Why don't we mark this.  
(Exhibit No. 6 marked for identification.)20 Q. I show you Barton Exhibit 6, which is a  
21 four-page packet of photographs, and I'll describe  
22 the pages. One is dated October 6, 2004, one  
23 photograph on the page. There's another page that24 C. J. REPORTING 978.409.9090  
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1 A. It's an oil company in Connecticut that  
2 we -- that Trans-Spec does transportation for.3 Q. Why did Trans-Spec -- I'm assuming Billy  
4 is Billy Howard?

5 A. Yes. Billy is the dispatcher.

6 Q. Why did Billy at Trans-Spec say that  
7 Trans-Spec can't do work for East River?8 A. I told him he didn't have the equipment to  
9 do it now. We had too many trucks down. And to be  
10 fair with the customer and let him know that we just  
11 couldn't handle it.12 Q. Skipping one entry down to where it says,  
13 "Jim at CAT said bolts were covered. Jay and Bob  
14 present." Who is Jim?

15 A. Jim is the service manager, Withrow.

16 Q. Jim Withrow?

17 A. Withrow, yes.

18 Q. Where did this conversation take place?

19 A. Somebody had mentioned something about  
20 bolts weren't covered or something, and I -- when we  
21 went to pick up a truck, I says, "Jim what's the  
22 story? Are the bolts covered or not?" He says, "Of  
23 course they're covered."

24 Q. The last entry, "Gary check for flywheel

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1 has two photographs dated October 8, 2004, another  
2 page that has four photographs dated October 6, 2004,  
3 and a final page with four photographs dated  
4 October 15, 2004. Do you recognize where these  
5 pictures were taken?

6 A. Yes.

7 Q. Where?

8 A. Freightliner in Shrewsbury, Massachusetts.

9 Q. Who took them?

10 A. I did.

11 Q. Where these for Truck 6100?

12 A. Yes.

13 Q. Does this refresh your memory?

14 A. Yes, it does.

15 Q. Can you describe what happened in early  
16 October 2004 regarding repair of Truck 6100?17 A. I received a call from the Freightliner  
18 dealership that Al Cardoza had come out and inspected  
19 a truck and told the mechanics to put a new flywheel  
20 on it and put it back together and epoxy the block.21 Subsequently, I went up there. The  
22 mechanic did not feel that this was suitable. The  
23 owner of Freightliner also was very concerned as to  
24 the fact that if they put it back together without

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1 cracks." Who is Gary?

2 A. He is one of the mechanics at night.

3 Q. What did you ask him to do?

4 A. I asked him to check the trucks over there  
5 and make sure what we had, that if we had anything  
6 that was broken, because they were coming apart too  
7 frequently and so many of them.8 Q. Was this an occasional request that you  
9 made of mechanics?

10 A. Quite often.

11 Q. Why?

12 A. Because we're trying catch them before  
13 they would disintegrate. We were trying to keep up  
14 with them, because, unfortunately, when the flywheel  
15 cracks, if you can catch it before it takes the block  
16 with it, it's less of a job. Unfortunately, most of  
17 them that crack, they take the right-hand -- the  
18 corner of the block.

19 Q. So this was preventative maintenance or --

20 A. Yes.

21 Q. On September 30, 2004, it says "7400 back  
22 to CAT, exhaust leaking." Is that the 7400 that was  
23 out in early September?

24 A. Yes.

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1 replacing the block, it would just break again. But  
2 this was their instructions that they received from  
3 Caterpillar, which some squawking was done, and it  
4 was finally fixed properly by putting a new block in  
5 it and a flywheel.

6 Q. Who did the squawking?

7 A. I believe I started doing the squawking,  
8 and I believe Jay Howard did some squawking also.

9 Q. Who did you speak to regarding this issue?

10 A. I think I believe I spoke with Al Cardoza.

11 Q. Where did that conversation take place?

12 A. On the phone.

13 Q. What was the substance of that

14 conversation?

15 A. Why are you trying to take advantage of  
16 us? The thing is warranted. You're going to put  
17 something back together and it's going to break again  
18 because you're not doing it properly.

19 Q. What did Mr. Cardoza say in response?

20 A. I don't even recall. It was a very heated  
21 discussion. Because all I know is, they fixed it  
22 properly and -- due to the diligence of the  
23 Freightliner dealership being honest with us.

24 Q. When you say "Freightliner," you

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1 consistently -- I should clarify for the record  
 2 A. Tri State Shrewsbury.  
 3 Q. Okay. "October 12, 2004, talked with Jim  
 4 at MiltonCAT re setting up inspection. Will let me  
 5 know. Maybe can be done at night." What inspection  
 6 does this refer to?

7 A. These were the inspections for the  
 8 Advantage program, the extended warranty that  
 9 Caterpillar had available. The cost to us was  
 10 \$55,920, and the stipulation was that every truck had  
 11 to be inspected by them. There was a certain  
 12 criteria it had to meet so it would be able to be  
 13 basically insured or warranted with the extended  
 14 warranty.

15 Due to our many trucks that were  
 16 broken down, I had to try to make arrangements where  
 17 we would have trucks available to deliver the product  
 18 and have the minimal trucks in being tied up. And  
 19 Jim was working this out with me, and the original  
 20 plan was to do an inspection at night, but it didn't  
 21 work that way.

22 Q. You earlier discussed language on the back  
 23 of the sheet registering the serial numbers of the  
 24 trucks with Al Cardoza. Do you recall when that

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1 conversation took place?

2 A. That was way back in October of 2003 when  
 3 I first went there.

4 Q. That was in one of your first meetings  
 5 with Mr. Cardoza?

6 A. Yes, that was at Truck Service when I  
 7 first met him.

8 Q. That was at the very first meeting with  
 9 Mr. Cardoza?

10 A. Yes, that's when I was introduced to him  
 11 at the garage.

12 MR. SAMITO: I have no more questions.

13 MR. GRUNERT: I'm going to have a few.  
 14 Just give me a minute.

#### REDIRECT EXAMINATION

15 BY MR. GRUNERT:

16 Q. Mr. Samito asked you about documents that  
 17 Trans-Spec has related to these trucks beyond the  
 18 ones that were included in Howard Exhibits 9 through  
 19 30. You referred to documents that Trans-Spec keeps  
 20 at 7 Cristo Lane. What documents related to the  
 21 trucks does Trans-Spec keep at 7 Cristo Lane?

22 A. I have no idea. Mostly mileage probably,  
 23 anything to do with the way they run the office,

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1 receipts, payments.

2 Q. When you said "mileage," what did you mean  
 3 by that?

4 A. Well, they had to keep track of mileage  
 5 for fuel tax purposes. That is basically where the  
 6 corporate office is.

7 Q. Now, what kind of records recording  
 8 mileage on the trucks are kept?

9 A. Well, they have to claim so many miles for  
 10 fuel tax purposes. I don't know exactly what kind of  
 11 records are kept. There are some kind of records.

12 Q. Are the mileage records generated  
 13 annually?

14 A. Couldn't tell you.

15 Q. But there are mileage records that record  
 16 the mileage on each of these trucks on particular  
 17 dates, and those are kept at the 7 Cristo Lane  
 18 office; correct?

19 A. I don't know if they're on particular  
 20 dates or if they're monthly, annually, quarterly. I  
 21 really couldn't tell you.

22 Q. Well, whether they're monthly or annually  
 23 or quarterly, they're on a particular date; it's just  
 24 you don't know how many dates per year; correct?

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1 A. I have no idea.  
 2 Q. And the best you can do is tell me that  
 3 those are mileage records?

4 A. I don't know what you'd call them. I'd  
 5 say there has to be some kind of records so they can  
 6 report their fuel use. So I would say they're  
 7 mileage.

8 Q. Now, the receipts that you referred to  
 9 that are kept at 7 Cristo Lane, what did you mean by  
 10 that?

11 A. Let's say they buy a truck, they get a  
 12 receipt; they buy a doughnut, they get a receipt.  
 13 Any business gets receipts when they purchase things.  
 14 So I would assume they would have receipts for items  
 15 purchased, et cetera, et cetera.

16 Q. So at 7 Cristo Lane, there are receipts  
 17 evidencing Trans-Spec's receipt of the trucks  
 18 involved in this case; correct?

19 A. I would imagine, yes.

20 Q. And there are receipts there evidencing  
 21 Trans-Spec's receipts of other trucks that it may  
 22 have received between 2000 and 2005; correct?

23 A. I would imagine.

24 Q. And you referred to payments. What did  
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1 you mean by payments?

2 A. Well, such if you paid to buy a flywheel  
 3 housing, I'm sure there would be a receipt there of  
 4 that.

5 Q. Well, so when you said "receipts" and when  
 6 you said "payments," were you referring to the same  
 7 type of documents?

8 A. Yeah, basically anything that money is  
 9 expended for, I would assume you would get some type  
 10 of receipt for it.

11 Q. All right. So stored at 7 Cristo Lane  
 12 there are mileage records for each of the trucks  
 13 involved in this case, receipts evidencing the  
 14 receipt of the truck, of each of those 22 trucks, and  
 15 then there are additional receipts evidencing parts  
 16 or components for those trucks that Trans-Spec  
 17 purchased; correct?

18 A. Parts, components, permits.

19 Q. Will there be things such as scale tickets  
 20 or weight tickets kept at the 7 Cristo Lane location  
 21 evidencing the weights that these various trucks were  
 22 pulling on various occasions?

23 A. I really couldn't answer that question. I  
 24 don't know.

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1 Q. Other than the mileage records and the  
 2 receipts that are kept at 7 Cristo Lane, what other  
 3 records related to these trucks are kept at that  
 4 location?

5 A. Probably the fees for registration,  
 6 overweight permits.

7 Q. I'm sorry, I missed the first one?

8 A. Overweight permits.

9 Q. Overweight permits.

10 A. Registrations.

11 Q. Bear with me here. I've seen references  
 12 to overweight permits. When does a common carrier  
 13 such as Trans-Spec obtain an overweight permit?

14 A. Every 12 months you have to have -- from  
 15 the Massachusetts Department of Highways, you have a  
 16 permit called an overweight permit. You also have to  
 17 have an overweight permit to use the Massachusetts  
 18 Turnpike. It's basically just another way of  
 19 collecting money for the Commonwealth.

20 Q. This is Massachusetts.

21 A. Right.

22 Q. The overweight; is there a particular  
 23 weight specified by the Commonwealth that if you're  
 24 going to operate a vehicle on the highways of the

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